Senator DURBIN hit the nail on the head as recently as 2018, saying it ''would be the end of the Senate as it was originally devised and created going back to our Founding Fathers.'' I agreed then, and I agree now.

Now the shoe is on the other foot, and Democrats have changed their position, many not for the first time.

Senator DURBIN has now joined the crusade of his Democratic predecessor, Stephen Douglas, of Illinois—famous for debating Abraham Lincoln on the issues of slavery. But that Douglas from Illinois also proposed a Senate rule change allowing a narrow majority to force a final vote on bills.

Hypocrisy is not rare in politics on both sides of the aisle, but the fact that Democrats switched principles on such a consequential matter whenever Senate control changes from one party to the other is particularly glaring.

The party of Jim Crow, which made liberal use of so-called filibuster just over a year ago to block Republicans' agenda, are now saying, falsely, it is a relic of Jim Crow.

I do not see how they can look the voters in the eyes with no sign of embarrassment. I do not understand why the policemen of our governmental system—the media—isn't roasting them for this hypocritical power grab.

I would now like to address a misconception on the cloture motion, the 60-vote requirement. The cloture motion requires 60 votes to bring consideration of legislation to finality. Just because it can be used to block legislation, does not mean that the term ''cloture'' always equals a filibuster.

Cloture cuts off not just debate but the offering of amendments. Voting for cloture, also, is saying that the Senate has voted on enough amendments. Senators who have amendments important to their State that they want to offer should be voting against cloture to preserve their right to offer amendments, as their constituents might desire. Debate and amendments are the hallmark of this democracy, not an obstacle to be swept aside in pursuit of a short-term partisan agenda.

When Democrats last controlled the Senate with 60 votes and thereafter, amendment votes became very rare. Even rank-and-file Democrats lost opportunities to represent their States with amendments important to that State.

Let's look at the cloture issue another way. Also, many people confuse debate over filibuster with talking nonstop to delay. That is a kind of ''Mr. Smith Goes to Washington'' filibuster—the famous movie, you know. This has nothing to do with cloture. People who talk about returning to the so-called talking filibuster are confusing two different Senate rules, both called filibuster.

Senators have never had to talk until they dropped from exhaustion to preserve their right to amend bills. So the talking filibuster rhetoric is nonsense. Democrats have convinced themselves or at least their activist base—and done it falsely—that our democracy is in crisis. And so it is absurd to say only one party, unilateral governance, can save democracy. But once an exception is made—and they are talking about that exception just for this voting rights bill, but once an exception is made to the right of all Senators to debate and to amend legislation, there seems to be no going back.

Democrats learned that in 2013, when they accomplished the 60-vote requirement on district and circuit court judges, and they lived to regret it 4 years later when Republicans did the same thing when we had a Supreme Court Justice up. It is a slippery slope that you should not let come about.

I yield the floor.

Mr. MERKLEY. Would the Senator from Iowa yield for a question?

Mr. GRASSLEY. I will.

Mr. MERKLEY. Thank you very much.

First, thank you for coming to the floor to debate such an important issue as how to make the Senate work well as a deliberative body and how to make our country work well.

I was struck by a couple of things that you mentioned, and that is that you had stood strong fast against striking down the filibuster, and you noted how consistent you were. But you also criticized Democrats for changing position.

But can you help my memory out on this, because did you not vote to strike down the filibuster on Supreme Court nominations?

Mr. GRASSLEY. Yes.

Mr. MERKLEY. So you changed your position, as well you would concede, since previously you had opposed getting rid of the filibuster?

Mr. GRASSLEY. Remember what I said, and I just said this. So you obviously heard me. We warned, in 2013, when I think all Republicans voted against reducing the 60-vote threshold for district court and circuit court judges, so you could pack the DC Circuit Court of Appeals, that you would regret that, and you have regretted it because Republicans were saying in 2017: What is good for the goose is good for the gander. And we voted to reduce it then for a Supreme Court Justice.

Now, I am sure that, from your point of view, you have a Supreme Court that is not very favorable to what you think a Supreme Court ought to be doing, with the three people that Trump put on there. So that is where I am coming from.

Mr. MERKLEY. I do appreciate your response, and it is so rare that we actually have any dialogue on the floor of the Senate. It is one of the things we lost.

I do recall in that moment that, for over a year, we had working groups trying to resolve the extraordinary level—the new level—of cloture motions on President Obama's nominations. It concluded in a meeting in the Old Senate Chamber where the agreement was reached to stop doing that. And then, as you point out, MITCH MCCONNELL came to the floor and said: It doesn't matter the quality of the individual who is nominated. I will not let any judge be considered for these three vacancies.

That is a completely unprecedented new element that is brought in to bear on that particular conversation. That is just to, kind of, illuminate some of the details that were left out.

I was struck by another thing you said, which is that the filibuster is not a relic of Jim Crow. I was struck about that because from 1891 through 1965—so we are talking over 80 years—the only thing that was blocked in the U.S. Senate by filibuster was civil rights for Black Americans. Given that, wouldn't you say it is fair for us to say that the filibuster in that history was, indeed, a relic of Jim Crow?

Mr. GRASSLEY. Do you know who held the Senate during that period of time on the issue you brought up? It was Democratic Senators from the South. Remember when the Civil Rights Act, in 1965, was passed, that there was a higher share—a higher percentage—of Republicans than Democrats that voted for it. The one person that made a difference in getting the Civil Rights Act passed was Senator Dirksen, the Republican leader.

I am going to have to end this discussion with you, but I want to say one thing. Why would you want to expand this precedent that is set by Democrats into legislation and weaken bipartisanship? That is where you have to leave it. It is a slippery slope. You may intend to do it just for a voting rights act, but it is going to go further.

Mr. MERKLEY. Thank you for answering and responding to my questions. I appreciate that.

The PRESIDING OFFICER. The Senator from Oregon.

## H.R. 5746

Mr. MERKLEY. Mr. President, I think I will start just by returning to the 1800s and a Senator from Massachusetts, Senator Sumner. Senator Sumner later played a key role in the civil rights debate, which is why I am returning to that story. I think it is a story about the Senate floor.

Sumner gave a speech about Kansas being admitted into the Union, and he was a Republican Senator who called out two Democratic Senators, insulting one of them. And a Representative from the House of Representatives, on the other end of this corridor, came over here. His name was Preston Brooks, and he took considerable offense, and he proceeded to come to the Senate floor and cane Senator Sumner. Senator Sumner was gravely injured, but he did recover—recovering slowly. He served for another 18 years, which leads me to the fact that he proceeded to put forward civil rights legislation in 1875—in 1875—150 years ago—almost 150 years ago, 145 years ago.

And so he argued after the Civil War that our Black Americans were being discriminated against and it needed to end; that anyone should go into any public accommodation and be treated equally here in the United States of America—a Constitution that says: All men—and let's include women—are created equally.

So he put forward this bill, and it said that every person gets equal access to theaters, to public schools, to churches, to cemeteries, equal opportunity to serve in jury duty, and that any suits brought in this regard would be tried in Federal court, not State court, so we could enforce a Federal standard of nondiscrimination across this land.

Sumner died of a heart attack in 1874. He had put forward this originally as an amendment—actually, an introduction in 1870, as a bill. He died before it could be passed. As he was dying, he pleaded with Frederick Douglass and others at his bedside: You must take care of my civil rights bill.

In the months following his death, the Senate did act, and they supported that bill, and it was passed into law in 1875. At that moment, it would be hard to envision that, after I was born, we would still be fighting for equal access to public accommodations. The Senate passed that bill and made it into law in 1875. But the Supreme Court of the United States struck down that law 8 years later. Boom—equal access in America supported by the elected Representatives in the House and the Senate was blown to smithereens by a Supreme Court of the United States of America.

Well, that did set the stage for another civil rights battle, and it was 1890. It was after Benjamin Harrison's successful Presidential campaign, in which he promised election reform and election integrity because, you see, anyone looking at our Republic would know that we are all affected, no matter what State we come from, by the integrity of the elections in the other States. There has to be integrity in all of them for this U.S. Senate to have integrity. There has to be integrity in all of the State elections for that House of Representatives down the hall to have integrity.

So Benjamin Harrison was elected campaigning on this type of reform. And there was a Senator, Senator George Hoar, who championed amendments or an attempt to bolster national protections for Federal elections. It was particularly targeted at stopping voter suppression that had really arisen in the southern part of the United States following the Civil War. So this bill, known commonly as the Lodge bill, also known as the federal elections bill, passed the House of Representatives in 1890.

What did this bill do? It allowed citizens from any district to petition a Federal circuit court to appoint Federal supervisors for congressional elections in case of efforts to suppress the vote by local officials. It permitted the Federal Government to appoint supervisors to oversee all phases of Federal elections, including voter registration and the certification of the election results to make sure there were no shenanigans at the State level that would corrupt the core vision of equal representation, the core foundation of integrity of elections. It is the foundation of the vision of the legitimacy and the production of government of, by, and for the people.

And this bill even enabled Federal election supervisors to request deputy U.S. marshals, as necessary, to protect the ballot box for every citizen to have access. It passed the House of Representatives, and it came here to the Senate, and it failed because they couldn't get unanimous consent to close debate. At that time, there was no cloture motion.

The Senators, in 1805, had gotten rid of the prior question rule, which would have allowed debate to be closed because they had a social contract. That social contract was that we listen to everyone to get their perspectives. People can speak, not once, but twice on a question. They can speak for as long we wanted to listen to everyone and then we take a vote. That was the social contract.

But this filibuster broke that social contract because everyone was listened to, but you couldn't get unanimous consent to close debate and so the bill died. It had the support of the people of the United States of America through their elected representatives down the hall. It had the support of this Senate to protect the fundamental right to vote in our Nation by the majority of this body here in the U.S. Senate. But the social contract was broken to block Black Americans from voting; to allow States and local election officials to rig the registration system so you could never sign up; to allow intimidators to gather at the polls to keep Black Americans from getting through them to put their ballot in the box.

I would like to say that all traces of inequality in voting are gone from America. I would like to say that. And, indeed, that was reasonably true—reasonably true—through the recent years, before the Supreme Court gutted the Voting Rights Act, because any changes in your voting rules had to be preapproved in States that engaged in these intimidating practice. I say ''reasonably true'' because the real fact is there was still a significant blemish in our elections, and that is, on election day, in certain States and certain precincts, there was a game being played to make it harder for some citizens to vote than other citizens to vote.

The game worked like this: If you have an area where you want low turnout, you proceed to create a big precinct so that there are a lot of people who have to go to that one place to vote. And if you have a desire to encourage the people in another precinct to vote, a White precinct, you create smaller precincts so the voting line won't be as long.

And then there were other tricks like, for example, understaffing the voting precinct where it is predominantly Black Americans to make it harder for them to vote and making sure you staff really well the precinct where you want the White Americans to vote.

And there were other tricks, as well. For example, relocating the voting location in the Black precinct so that people go to the wrong place, or putting it where parking is virtually impossible so it is much harder to get to the poll, or putting out false information about the date and the location of the voting.

These things are all wrong. Voter suppression exists today. And it was powerful to see how a couple tools have greatly reduced those tricks and traps.

One of those tools is early voting. If you have an early voting period, it is hard to create long lines. It is hard to sustain wrong information about where to go. It is very difficult to deny people the ability to vote simply by having too few staffers.

Even more so, vote-by-mail is powerful. Now, we have Republican States like Utah that have vote-by-mail, and they love it. And it elects Republicans. You have more blue States like Oregon that have vote-by-mail, and they love it. That is my home State.

I was really struck, when I was first running for the Oregon State Legislature—it was 1998, and we still voted at the precincts' voting polls, except the Republican Party had said: We can increase turnout if we get all the Republicans to sign up for absentee ballots. So they got a high percentage of Republicans to sign up for absentee ballots. Then the Democrats said: Well, OK, yes, we can get Democrats to sign up for absentee ballots. So 50 percent of the electorate in 1998 in Oregon was voting by mail and 50 percent, polls.

As I went door to door in my first race for the Oregon House and asked people what they liked and didn't like, they normally said: What I really hate is that we have too many potholes, and I am not happy with city hall. What I really like is my absentee ballot.

I would say: Well, why is that?

They would say: Well, you know, I don't have to worry about where to park, and I don't have to worry about long lines. Do you know what else? It is a complicated set of issues under the initiative system we have in Oregon, and I can be able to sit at my table, study them, discuss them with my spouse, and have my children come to the table and see what we are doing.

Well, these two tools really opened the doors to the election process in the last election, and the response of my Republican colleagues was: Oh, no, we can't let that happen. We don't want those people to vote. We better rein in vote-by-mail. We better rein in voter registration.

Georgia got rid of voter registration in between the main election and the

runoff because 70,000-plus Georgians registered in that period, and they think it helped Democrats more than Republicans. So, in a prejudicial way, they said: Let's make registration harder.

Well, it is not acceptable in our country to erect barriers for targeted communities—not for Black Americans, not for Hispanic Americans, not for college students, not for young voters, and not for Native American reservations—not for anyone.

But why are those groups being targeted in a surgical way by the strategies in State after State after State with Republican legislatures and Republican Governors? Because those constituencies tend to vote more often for Democrats than Republicans. So they are stealing the vote of millions of Americans. They are corrupting the election process for millions of Americans.

We stand here today in the Senate with the same issue we were debating in 1890 and 1891. The House had set national standards so every American could vote, and the Senate would not give unanimous consent to get to a final vote and contributed to eight-plus decades of discrimination in our country, of corrupted elections in our country—until the Voting Rights Act of 1965.

I see a colleague here preparing to speak, and I haven't even begun my real speech yet. I am going to close to hand the floor to him, my colleague from Maryland, but let me summarize a couple points before I do so.

I believe the Senate is far better off when the minority has the power to slow things down. I think that is value, to be able to have leverage to get amendments; to be able to negotiate a compromise; to be able to make sure a technical bill has been examined by experts and you understand what it really does; to make sure we have seen all the provisions; to make sure the public has seen all the provisions; to make sure the press has been able to investigate the provisions. All of that is incredibly positive, and it is why, whether I have been in the minority or been in the majority, I have argued we need to sustain 60 votes to close debate, and I still hold that position now—60 votes to close debate by a vote.

There have traditionally been four ways that a debate on the floor comes to a conclusion.

The first is a break in the debate. At that point, I was struck when I asked the experts ''Is the Chair allowed to call the question?'' and I was told that not only can they call the question, they have a responsibility to call the question when there is a break in the debate. So a break in the debate is one.

The second is by unanimous consent. Everyone agrees we have been at this long enough. Let's do four more amendments and then go to final passage, and there is a unanimous consent agreement to do that. We still do that quite often.

The third is to have a vote on closing debate, and we have to get 60 votes. It is not a ratio of those who show up to vote. So the irony is, those who want a debate often don't show up. You can have a vote 59 to 5, and the 59 lose. You have to get 60 votes.

The fourth is rule XIX, which says every Senator gets to speak twice. Now, as far as I am aware, there has never been a debate in the U.S. Senate that was finally brought to a close by everyone using up their two speeches, but it always hovers there, saying there is an eventual ability to vote on the question.

These are the four traditional strategies. We need to apply those four strategies to a period of debate addressing final passage of the bill. The cloture motion would still be there. The possibility of a UC would still be there. A break in the debate would still be a break in the debate, and a UC would be a UC. All four tools would still be there, but we would be addressing final passage.

The problem we have—a little kind of behind-the-scenes complexity of Senate rules—is that in the modern Senate, there is always a pending amendment. So you can't actually get to final passage unless you have a period of debate dedicated to final passage, and breaking the debate would call the question on the amendment, not final passage.

This means that those who want more debate could hold the floor for weeks and weeks on something they are determined to keep presenting to the American public, but it brings in the public. It brings in the public. They can weigh in on whether we are heroes or whether we are bums. They can weigh in on amendments we say we are going to bring up the next day. They can help us understand how folks back home feel.

There is no public in the no-show, no-effort, invisible filibuster we have had since 1975. There is no public, and there are no amendments because amendments require a supermajority to close debate. Someone says: Well, I am not going to agree to that until my amendment gets up. There is no longer a social contract: You do your amendment. I will do my amendment. We will all do them. They will be on topic.

It is gone. So the number of amendments has dropped tenfold between the 109th Congress and the 116th Congress. The number of amendments dropped more than tenfold over that time period. Instead, the floor managers negotiate. The leaders negotiate. They produce a list and then ask everyone to agree to that list, and someone objects: You left out my amendment.

So we—a room full of former House Members and industry leaders, former Governors, former speakers of their State house or presidents of their State senate; all of this talent sitting around here—do nothing day after day after day while the invisible, no-show, no-effort filibuster destroys debate in the Senate of the United States of America.

It is our responsibility to restore debate in this Chamber, to restore amendments. The advantages of the restoration are, No. 1, that you have amendments; No. 2, that you have public debate; and No. 3, perhaps the most important, you have an incentive for both sides to negotiate, because under the no-show, no-effort, invisible filibuster that we have had since 1975, the minority of either side says: You know, if I can get 41 of our minority Members to agree not to close debate, and all they have to do is not even show up to vote or show up to vote if they like but vote no, then the majority can never get anything done, and won't that enhance our political power in the minority party?

That is an almost irresistible temptation in the tribal, partisan warfare of today. So each minority is tempted into basically exercising a veto over the majority party's policy agenda. That is ''an eye for an eye makes the whole world blind,'' strategy. The Democrats sabotage the Republican majority. The Republicans sabotage the Democratic majority. But under the public filibuster, not only is the public involved, but the minority has to maintain continuous debate, which can be hard, so they have an incentive to negotiate. The majority, seeing the time burned up that they need for other things, other policy bills and nominations, they have an incentive to negotiate. So you get amendments. You get the public involved. Most important, you recreate an incentive to negotiate. That is the reinvigorated filibuster strategy, the talking filibuster.

Call it the public filibuster or just call it extended debate on final passage of the bill. Whatever you call it, it is better than the paralysis and partisanship that are destroying the Senate's ability to address the questions that face this Nation, and there is no more important question than defending the right of every citizen to vote.

The PRESIDING OFFICER. The Senator from Maryland.

## H.R. 5746

Mr. VAN HOLLEN. Mr. President, let me start by thanking our colleague, the Senator from Oregon, Senator MERKLEY, for his leadership in working to restore the functioning of the Senate and to protect our democracy. We need both, and we need them now.

It was just 12 days ago that we marked the 1-year anniversary of the January 6 attack on this Capitol and on our democracy itself. It was a violent attempt to stop Congress from certifying the Presidential election of Joe Biden and to overturn the decision of the American people. It was inspired and instigated by the former President.

While that assault did not succeed in stopping us from counting the vote that day, the Big Lie did not die. In fact, the Big Lie has metastasized. It has spread, and its poison is seeping across the country. It is now taking